

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration

Between

CITY OF PHILADELPHIA,

“City”

-and-

F.O.P., LODGE NO. 5,

“Union”

Docket #1439001836-09

Re: Discharge of B. Mills

Hearings: April 16, 2010
June 13, 2011

APPEARANCES

For the City:

Steven Dickerson, Esq.

For the Union:

JENNINGS SIGMOND
Marc Gelman, Esq.

BACKGROUND

Sgt. B. Mills was discharged on September 22, 2009 for "conduct unbecoming an officer," a violation of Section 1.75 of the Dept's Rules and Regulations. (Specifically, Mills is charged with using excessive force and providing a false statement.) The Union asserts the City lacked just cause for his discharge. It asks that he be promptly reinstated and made whole for all losses.

The events which led to this dispute occurred on the morning of December 22, 2007. Sgt. Mills testified at length. He stated that in 2007 he maintained two residences, one of which was at [REDACTED] where several of his siblings resided. He and his children lived on [REDACTED]. He arrived at the [REDACTED] house at around 7:00 a.m. to drop off his children. While there, his younger brother, K [REDACTED], came downstairs. He appeared agitated, but would not respond to questions. He returned upstairs. Seconds later, Mills states, he heard a loud noise and his brother shouting "Get the f____ out of here." He raced upstairs to investigate. He walked into K [REDACTED]'s room. He saw someone in the bed with a blanket pulled over his head. He pulled the blanket back and saw a man – later identified as M. S [REDACTED] – in the bed. K [REDACTED], who was in the room, was shouting at S [REDACTED] to "get the f____ out of here." Mills' sister, K [REDACTED], came into the room and said that S [REDACTED] was a friend of hers.

At that point, K [REDACTED], pulled Mills aside and told him he had awakened and found S [REDACTED] licking his buttocks. Mills asked if he was sure. K [REDACTED] said he was. Mills then told S [REDACTED] to leave the house. S [REDACTED] gathered his clothes and went downstairs. Mills followed him a few seconds later. When he reached the first floor, and proceeded to the front door, he spied S [REDACTED] lying on a sofa. K [REDACTED] came down. She told S [REDACTED] to leave the house. S [REDACTED] stood up. He pulled a cell phone from his pocket. He said he needed his shoes. Mills sent K [REDACTED] upstairs to get them. She came back with the shoes.

At that point, S [REDACTED] moved towards the dining room. As he did so, Mills saw S [REDACTED] pull an object out of his jacket pocket. S [REDACTED] raised his arm. Mills thought S [REDACTED] was about to strike him. He "shoved" S [REDACTED] to the floor. They struggled a bit. Mills was on top of S [REDACTED]. He admits that he was "hitting" S [REDACTED]. He directed K [REDACTED] to dial 9-1-1.

Soon thereafter, police arrived. Mills insists he was simply trying to restrain S [REDACTED], who still had an object in his hand. Mills identified himself as an off-duty officer and directed the responding officers to cuff S [REDACTED]. He started to get up, and S [REDACTED] did too. Mills kicked S [REDACTED]'s hand. S [REDACTED] was handcuffed.

A sergeant arrived and Mills explained what had happened. The sergeant went to talk to K [REDACTED]. By then, Lt. J [REDACTED] arrived. Mills related his story.

An investigation ensued. The officers who arrived at the scene were interviewed. Their statements were transcribed and attested to.

Two, P.O. A. H [REDACTED] and P.O. L. S [REDACTED], also testified. H [REDACTED] stated that when he entered the house he saw S [REDACTED] lying on the floor by the wall in a fetal position. S [REDACTED]'s face was bruised and bloody. Blood was "everywhere" – on the wall, on the floor, on the living room carpet. S [REDACTED], he noted, had nothing in his hands. They were covering his face. He saw Mills try to pull S [REDACTED] away from the wall. Although it was clear to him that S [REDACTED] posed "absolutely no threat," Mills kicked S [REDACTED] "three or four times" in the back of his head and shoulder area. Mills was pulled away, and S [REDACTED] was cuffed.

S [REDACTED]' testimony affirms that Mills was kicking S [REDACTED], even though S [REDACTED] "posed no threat."

At the conclusion of its investigation, the City notified Mills that it intended to dismiss him on September 12, 2009. (See Joint Exhibit 1.) It did so on September 22, 2009. That action prompted the instant grievance. Failure to resolve it led to this dispute.

DISCUSSION & FINDINGS

The Issue:

The sole issue here, as stipulated at the April 16, 2010 hearing, is: Did the City have just cause to discharge Sgt. B. Mills?

The Department's Rules

Section 1.75 is entitled "Conduct Unbecoming an Officer." It is defined as "Repeated violations of Department rules and regulations, and/or any other course of conduct indicating...little or no regard for his/her responsibility as a member of the Police Department."

The Department publishes directives on a variety of subjects. Directive 22 (issued on December 11, 2000) deals with the "Use of Force." It specifies that "Only the minimal use of force necessary to protect life or to effect an arrest should be used by an officer. Excessive force will not be tolerated...Officers should [use] only the amount of force necessary to overcome resistance."

Opinion:

This case turns on a basic question: did Mills use "excessive force" as regards S [REDACTED] on December 22, 2007. The answer, I am persuaded, is that he did. My reasons follow.

To begin with, there is clear and compelling photographic evidence to consider. Photographs taken of S [REDACTED] clearly reveal that he was severely beaten. His lips were cut, bruised and swollen. Abrasions were on his cheeks. His forehead, ear and back showed bruises. And, significantly, his blood was splattered on the [REDACTED] house's wall, floor and carpet.

Mills – and he alone – is responsible. His effort to describe the incident as benign was unconvincing.

Second, there is eye-witness testimony to corroborate the photographic evidence. Both Officers H [REDACTED], and S [REDACTED] affirmed that S [REDACTED] posed no threat to Mills, or anyone else. Yet, both saw Mills kick S [REDACTED] while he was on the floor. Neither saw a need for such physical contact. H [REDACTED]'s interview statement in the Internal Affairs investigation speaks volumes. (See Union Exhibit 1.)

Third, I found H [REDACTED] and S [REDACTED] to be completely credible witnesses. They had no ax to grind. They had no stake in the outcome. Their eye-witness accounts were damaging.

Mills, on the other hand, was devoid of credibility. He affected a mild mannered reaction to his brother telling him S [REDACTED] was sexually assaulting him. Clearly, that would – if true – be abnormal. It would be entirely understandable for Mills to exhibit rage. But as a police officer – a sergeant, no less – he is not entitled to take things into his own hands and physically assault someone. His responsibility is to maintain restraint. The overwhelming weight of the evidence shows he did not.

There is no doubt – absolutely none – in my mind that Mills is guilty of having used excessive force on S [REDACTED]. He clearly violated Directive 22's

injunction. His offense was serious. He compounded it by providing what I am convinced is false testimony. His discharge was warranted. It is sustained.*

One last point. It disturbs me greatly when an employee who is seeking to use the arbitration process to gain reinstatement, abuses that process by fabricating his testimony. Such conduct is an insult to the process, to his union, to his advocate. Employees who would do so forfeit any chance of an arbitrator finding mitigating circumstances which might warrant reinstatement.

* * *

* There was a 14-month delay between the first and second hearings. A second hearing had originally been scheduled for May 20, 2010 to take testimony from Lt. [REDACTED]. It was postponed indefinitely after [REDACTED] reported that Mills had tried to persuade him not to appear. That allegation led the District Attorney to file a criminal charge of witness tampering against Mills. The charge was ultimately dismissed – not on the merits, but on procedural grounds.

AWARD


The City had just cause to discharge B. Mills.

DATED: June 20, 2011


STANLEY L. AIGES

AFFIRMATION

I, STANLEY L. AIGES, do hereby affirm upon my oath as Arbitrator that I am the individual who executed this instrument, which is my Award.


STANLEY L. AIGES